

Application No. 10/049,488
Amendment dated June 24, 2009
Reply to Office Action of March 31, 2009

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Docket No.: 56925(71745)

REMARKS

Claim 17 and 24 have been canceled without prejudice. Claims 9, 10, 18, 19 and 21 have been amended. No new matter has been added as a result of amendments to the pending claims. Support for the amendments can be found throughout the specification and figures as originally filed.

Applicants respectfully reserve the right to pursue any non-elected, canceled or otherwise unclaimed subject matter in one or more continuation, continuation-in-part, or divisional applications.

It is submitted that the claims, herewith and as originally presented were in full compliance with the requirements of 35 U.S.C. § 112. The amendment of the claims, as presented herein, is not made for purposes of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112. Rather, this amendment is made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the herewith amendment should not give rise to any estoppel.

Reconsideration and withdrawal of the rejections of this application in view of the amendments and remarks herewith, is respectfully requested, as the application is in condition for allowance.

1. Claims 9-16, 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states, "In claim 9, line 2, "comprising by" is grammatically unclear. Claim 10 is unclear because it is unclear how an "extruded metal" can be a "drawn material" since drawn materials are pulled and extruded materials are forced through a die.".

Applicants have amended claims 9 and 10 to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully request reconsideration.

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2. Claims 17-19, 21, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney (4662545).

The Examiner states, "Kenney teaches a barrel 6 with a wire piston 32 fitting snuggly inside the barrel (col. 2, lines 21, 31-32). The piston extends beyond the barrel for dispensing as shown in Figure 14. In use, the piston is withdrawn from the barrel to allow the barrel to aspirate by capillarity and then the piston is depressed to dispense (col. 2, lines 49-62). With respect to claims 18 and 19, a strip 4 is shown having plural (sprocket) holes that are structurally capable of alignment and driving, as by inserting a robotic hand. The strip could be used to attach plural pipettes as by stapling a second strip at a protruding portion.

Kenney fails to teach drawing the plunger into the barrel to aspirate. It would have been obvious to draw the piston into (through) the barrel after dispensing a first sample in order to aspirate a second sample as was known in the art. Note that the instant claims do not preclude the additional tube 54. Note that the steps of the method of making the barrel have not been claimed. The barrel is therefore claimed in product-by-process language, and the structure resulting from this process is the same as that disclosed by Kenney.".

Claims 17 and 24 have been canceled without prejudice. Claims 18, 19 and 21 have been amended to be dependent from claim 9. Since claims 17 and 24 have been canceled, the claims no longer contain product-by-process language, and consequently the basis for an obviousness rejection has been obviated. Applicants respectfully request reconsideration.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

FEE AUTHORIZATION

Should any fees associated with the submission be required, the Commissioner is authorized to charge such fee to our Deposit Account, No. 04-1105, Reference 56925 (71745). Any overpayments should be credited to said Deposit Account.

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Respectfully submitted,

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